

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 19, 2002

STATE OF TENNESSEE v. HOSEA GRANT

Appeal from the Circuit Court for Anderson County
No. 98CR0457 James B. Scott, Jr., Judge

No. E2000-02607-CCA-R3-CD
June 21, 2002

The defendant, Hosea Grant, was convicted of driving under the influence. See Tenn. Code Ann. § 55-10-401(a)(1). The trial court imposed a sentence of 11 months and 29 days and directed that the defendant could apply for probation after 60 days in jail. In this appeal of right, the defendant argues that the evidence was insufficient. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Debra Fannin Graham, Oak Ridge, Tennessee, for the appellant, Hosea Grant.

Paul G. Summers, Attorney General & Reporter; Mark A. Fulks, Assistant Attorney General; and Jan Hicks, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Between 3:00 and 4:00 A.M. on November 8, 1998, the defendant entered a Rocky Top Market and attempted to purchase beer from the clerk, Melissa Webster. Because it was after 3:00 A.M., beyond the time of legal beer sales, Ms. Webster refused to sell the defendant any beer. Although the beer the defendant placed on the counter had a value of between \$5.00 and \$7.00, the defendant placed approximately \$45.00 in cash on the counter. Again, Ms. Webster refused to sell the beer to the defendant. At that point, the defendant stated that he was "messed up" and returned to a tractor-trailer truck he had parked outside. The defendant moved his truck and then returned to the market. According to Ms. Webster, he "kind of wobbled, walked back to the magazines and opened up some of those dirty magazines, looked at me, didn't say nothing, stood there for maybe 10 minutes, then walked out." Ms. Webster, who described the defendant as having alcohol on his breath and blood-shot eyes, then telephoned the Oak Ridge Police.

Officer D.W. Thompson was dispatched to the Rocky Top Market shortly after 5:00 A.M. When Officer Thompson arrived, the defendant was driving his truck from the parking lot onto the public road. Officer Thompson activated his blue lights and stopped the defendant, noticing that he held onto the cab of the tractor as he stepped outside. Officer Thompson smelled alcohol on the defendant and asked him to perform a heel-to-toe field sobriety test. Although the defendant placed one foot in front of other, he commented, "This is bull s____, I can't do this." The defendant denied drinking and, when asked to lift one foot and perform a kicking motion, attempted to lift his foot and remarked, "This is bull s____, I'm not doing this. . . ." Officer Thompson described the defendant as unsteady on his feet, unable to stand in one spot, and highly intoxicated. As Officer Thompson made the arrest, the defendant admitted that he had been drinking at Cotton-Eyed Joe's, a country bar located approximately 12 miles away.

Officer Daniel Freytag, also with the Oak Ridge Police Department, arrived shortly after the arrest. After ensuring that the tractor-trailer had been towed away, Officer Freytag observed the defendant in the emergency room at the Methodist Medical Center. The officer described the defendant as intoxicated. He stated that the defendant refused a blood alcohol examination.

The defendant, a long-haul truck driver from Warwick, Rhode Island, was employed by Farr, Incorporated, at the time of his arrest. The defendant acknowledged that he had driven through Oak Ridge while en route to Dallas, Texas. He stated that he parked and secured his truck, which he left running, and then accepted a ride from an acquaintance to Cotton-Eyed Joe's, where he stayed from 9:00 P.M. until about 2:00 A.M. The defendant admitted that he attempted to purchase beer and cigarettes at the Rocky Top Market, but denied having offered Ms. Webster \$45.00 to sell the beer after legal hours. The defendant claimed that he was on his cell phone with his fiancée, undressed, and ready for bed when the officer arrived. He admitted that the engine to his truck was still running, explaining that he avoided mechanical difficulties that way and also needed the engine operating for heat in the cab. The defendant denied entering the Rocky Top Market more than once.

In this appeal, the defendant claims that there was no evidence of the degree of his impairment, an essential element of the offense. He submits that there was no evidence that he failed any tests and no testimony that his ability to drive the vehicle had been impaired in any way.

On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). This rule applies to findings of guilt based upon direct evidence,

circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

Tennessee Code Annotated section 55-10-401 provides, in part, as follows:

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system;

Tenn. Code Ann. § 55-10-401(a)(1).

Here, the defendant admitted that he had consumed alcohol. The clerk at the market and two officers testified that the defendant was intoxicated. There was testimony that there was redness in the defendant's eyes and that he smelled like alcohol. Two witnesses testified that they saw the defendant drive his vehicle. The evidence was sufficient, in our view, to establish the offense. It was the prerogative of the jury to weigh the circumstances and conclude that the degree of the defendant's intoxication affected his ability to drive.

Accordingly, the judgment is affirmed.

GARY R. WADE, PRESIDING JUDGE